

RULING TO BE MADE IN ANDREWS CASE

Judge to Decide Today on Dismissal Plea

Criminal District Judge Frank J. Shea will rule at 9:30 a. m. Sunday whether to throw out any or all of five perjury counts against Dean A. Andrews Jr. after a defense motion Saturday claiming state failure to prove the elements of crime.

The attorney for Andrews, who is charged with lying to the Orleans Parish Grand Jury in connection with its investigation into an alleged conspiracy to kill President John F. Kennedy in 1963, moved about 3 p. m. Saturday for a directed verdict of not guilty.

After the jury was dismissed, Harry A. Burglass, Andrews' attorney, sought the judge's ruling after charging that District Attorney Jim Garrison's office has not proved the elements of "corpus delicti" and "materiality" in the five counts.

Through two hours the defense harped on its points, maintaining throughout that the state "has no case" and that it is "basic law that a defendant cannot condemn himself with his own mouth with nothing else in the record to do so."

DEFENSE ARGUES

Burglass said the only matters before the court are Andrews' own "declarations" or the testimony of witnesses who "say what he said." The defense maintained absence of a corpus delicti, which is defined in law as the substantial and fundamental fact or facts necessary to the commission of a crime.

Alluding to Andrews' "boise and colorful manner of speaking," Burglass said "he made inconsistent statements, but there is a consistency in his inconsistent statements."

Prosecuting attorney James L. Alcock cited various testimony in which he said Andrews first said he "can't say"

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whether Clay L. Shaw and a Clay Bertrand were the same person, then that Clay Bertrand does "not exist at all" and finally that Bertrand is Eugene C. Davis.

Shaw is under indictment by the Grand Jury for allegedly being a participant in a plot here in 1963 to assassinate Kennedy. The retired New Orleans businessman denied using the alias of Bertrand, as Garrison said he did, or having anything to do with a plot.

Andrews told the Warren Commission, which named Lee Harvey Oswald as a lone assassin of the President, that Bertrand called him the day after the murder to come to Dallas to represent Oswald.

BAR OPERATOR

Davis is a French Quarter bar operator whom Andrews subsequently identified as Bertrand, but Davis has denied using the name.

The defense, in seeking the directed acquittal verdict, said the state failed on the corpus delicti issue in that it has not proved that Shaw and Bertrand are identical.

Alcock charged that Andrews "lied upon the world" the name Bertrand and it is "obvious that this man won't tell the world the truth on this matter."

Andrews has been quoted as saying he delayed in identifying Davis as Bertrand because he wanted to protect Davis, whom he described as "vulnerable."

The prosecution charged that various testimony of Andrews describing Bertrand does not fit the physical and vocal qualities of Davis, and therefore Andrews was lying if, in fact, Davis is Bertrand.

The irony of the state's move to seek a perjury conviction on this count is that if it is accepted as true that Davis is Bertrand, then the state is apparently contradicting its position that Shaw is Bertrand.

For this reason, Burglass commented, "If the state says Davis is Bertrand, then I don't think they want to be saying that."

Earlier Friday, Andrews' testimony in his second appearance before the Grand Jury June 23 was read to the five-man jury by Mrs. Laureen

Thiel, official court reporter for the Grand Jury.

Some of the quotes from Andrews read as follows:

"I may have said a thousand times one thing, but the one time I say Clay Shaw ain't Clay Bertrand, clear me of all the rest."

"It doesn't make any difference to me if I am convicted."

"Clay Shaw is not Clay Bertrand. Indict me if you want to."

ASKED OF DAVIS

At one point in the testimony, Andrews was asked by a district attorney's aide, "When you testified before the grand jury March 15, you knew Bertrand was Eugene Davis?"

Andrews' reply was read as, "So I lied, I committed perjury. I don't know what I said. The man is Eugene Davis."

Garrison claims that Andrews lied when he told the grand jury in March that he could not say whether Shaw and Bertrand are one and the same man.

At his second grand jury appearance, Andrews identified Bertrand as Eugene Davis. Andrews said he did not mention Davis by name the first time because "I decided that it was not necessary for this man to be exposed to what I had been exposed. He was a client of mine."

NEWSMAN CALLED

After the 20 pages of Andrews' grand jury testimony were put into the record, the state called Robert Scott, a newsmen for radio station WHOK, Boston. Scott played a tape recording of a 15-minute telephone interview he conducted with Andrews last February.

A voice identified as being that of Andrews said, "People seem to think I know more than I know. . . . If the action stirs up, I'm going West."

The voice said that Oswald was "just a patsy" in the Dallas

assassination of Kennedy. "He ain't nothing but a decoy. Everybody knows that. All you have to be is half-intelligent to know that."

The voice also declared that the problem with the Warren Commission investigating Kennedy's death was that it did not probe deep enough into certain aspects of the case. All the commission had to do was "put the pieces together," the voice claimed.

After the recording, Judge Shea called a half hour luncheon recess.

When court reconvened, Alcock called several television newsmen to the stand to certify their presence while certain statements were being made by Andrews on film.

A filmed tape of an interview conducted on the steps of the Criminal Courts Building June 28 was then shown. In it, Andrews identified Clay Bertrand as Eugene Davis. Asked in the film why it took him so long to reveal who Bertrand really is, Andrews replied, "How would you like to get hustled, have your brain knocked out?"

Andrew J. Sciambra, an as-

sistant district attorney, was also called to the stand for questioning on an interrogation of Andrews in the district attorney's office March 2. Asked if Andrews ever identified Clay Show as Clay Bertrand, Sciambra replied, "He did not."

Sciambra said a tape recording was made of the interview. His testimony was interrupted when defense counsel said it needed more time to study the transcript of the interview. The judge granted the request, and Sciambra was taken off the stand while other witnesses were called.

Prontias Davis, a retired Army sergeant who worked for Andrews as an investigator, then testified about an incident which occurred Nov. 24, 1963, two days after the President was killed and the day Oswald was shot in Dallas by Jack Ruby.

"I drove to the hospital just before 1963 to see Andrews (where he was confined) and got there just after the television showed Oswald being shot. He (Andrews) said we had just lost a client. He said he had got a call from Dallas to represent Oswald," Davis stated.

Asked if Andrews said the call

came from Clay Bertrand, Davis replied, "Yes."

REMARK VOLUNTEERED

Davis then volunteered the information that Andrews frequently used the name Bertrand to mask the identity of whom ever he might be referring to. The judge told the jury to disregard the remark.

The prosecution then called back to the stand two state policemen who testified earlier about a night club encounter with Andrews April 22.

Sgt. John J. Bucola said that during the course of the conversation with Andrews the attorney said he would rather "take 5" than be known as a "ink." He explained that Andrews meant spending five years in prison rather than be known as a "steal pigeon."

Though the extent of the conversation was not revealed during Bucola's testimony, it was determined that the name Clay Bertrand did come up.

The second policeman, Lt. Thomas B. Casso confirmed Bucola's earlier testimony. Casso noted that he was assigned to Garrison's office to assist in the assassination probe.